APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after the date of the enactment of this Act, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

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SEC. 166. REVOCABLE TRUSTS.

Where at any time during the taxable year the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition

of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor.

SEC. 167. INCOME FOR BENEFIT OF GRANTOR.

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (n), relating to the so-called "charitable contribution" deduction);

then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not hav-

ing a substantial adverse interest in the disposition of the part of the income in question."

Treasury Regulations 77, promulgated under the Revenue Act of 1932:

> ART. 881. *Income of trusts taxable to grantor.*—In the case of certain trusts which are in whole or in part subject to revocation by the grantor or by any person not having a substantial adverse interest, or which are for the benefit of the grantor, the income of the trust is to be included in computing the net income of the grantor. The income of such trusts must be so included, whether or not the trust was created before the enactment of the Revenue Act of 1932. The cases in which the income of the trust is to be included, in whole or in part, in computing the net income of the grantor are as follows:
>
> (1) Where at any time during the taxable year the power to revest in the grantor title to any part of the corpus of the trust is vested—
>
> (*a*) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or
>
> (*b*) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,
>
> then the income of such part of the trust for such taxable year shall be included in computing the net income of the grantor. The grantor shall include in his income the entire gross income of such part of the trust, and shall be entitled to such deductions with

reference to such income as he would have been entitled to if the trust had not been created. Where the grantor relinquishes during the taxable year his power to revest in himself title to the corpus of the trust and the power does not remain in any person not having a substantial adverse interest in the disposition of the corpus of the trust or the income therefrom, the income of the trust shall be taxable to the grantor only for the period during which he had such power.

(2) Where any part of the income of a trust—

(*a*) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(*b*) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(*c*) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (n), relating to the so-called "charitable contribution" deduction);

then such part of the income of the trust shall be included in computing the net income of the grantor.

As used in this article, the term "in the discretion of the grantor" means "in the

discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question," and the term "substantial adverse interest" means "substantial interest in the trust adverse to the grantor."

H. Rept. No. 179, 68th Cong., 1st Sess., p. 21 (1939–1 Cum. Bull. (Part 2) 256):

> SECTION 219: This section has been rewritten in order to secure clarity and to prevent the evasion of taxes by means of estates and trusts. The changes made are quite important.
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> Subdivision (h) of this section provides that the income of a trust which may be distributed to the grantor or which may be used for the payment of premiums upon policies of insurance on his life shall be included in the gross income of the grantor. Trusts have been used to evade taxes by means of provisions allowing the distribution of the income to the grantor or its use for his benefit. The purpose of this subdivision of the bill is to stop this evasion.

S. Rept. No. 665, 72d Cong., 1st Sess., pp. 34–35 (1939–1 Cum. Bull. (Part 2) 521):

> As in the case of the preceding section, attempted avoidance of the provisions of this section, relating to income held or accumulated for the grantor, has rendered expedient a change in its wording to check certain recent practices. The present law taxes the income of a trust to the grantor when in his discretion, either alone or in conjunction with a person not a beneficiary, the trust income may be held or accumu-

lated for future distribution to him, or is or may be applied to the payment of premiums upon insurance policies on the grantor's life. Trusts have been established in which income is held or accumulated for the grantor, which fact, it is contended, removes such trusts from the operation of this section. Here again, it is not at all certain that the courts will uphold such devices; yet the statute may well be clarified to remove any doubt that the income of such trusts is to be taxed to the grantors. In the House bill, the section has been amended to provide that there shall be taxed to the grantor of a trust any part of the income of the trust which (1) is, or in the grantor's discretion may be, held or accumulated for future distribution to him, or (2) may, in the grantor's discretion, be distributed to him, or (3) is, or in the grantor's discretion may be, applied to the payment of premiums upon policies of insurance on his life. Your committee has further amended the section so as to cover, in addition, cases in which the discretion as to the disposition of the income is in any person not having a substantial adverse interest in the disposition of such income, even though such discretionary power is not shared with the grantor. The House bill added a subsection defining the term "in the discretion of the grantor," so as to include within the purview of the section cases in which the discretion is in the grantor in conjunction with any person not having a substantial adverse interest in the disposition of the income in question.

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